THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23516 OF 2005

DATED:2.11.2005

Between:

Botta Adilakshmi

…Petitioner

And

Visakhapatnam Municipal Corporation

Visakhapatnam, Rep. by its Commissioner

…Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.23516 OF 2005

ORDER:

The petitioner is owner of house site admeasuring 111.33 Sq.yards bearing H.No.18-1-37, at K.G.H.Down Road, Maharanipet, Visakhapatnam. The respondent Corporation issued a notice dt.22.9.2005 requesting the petitioner to give consent in relation to 18.33 Sq.yards of her land which is affected under the proposed road widening from K.G.Hospital to Lepakshi Junction. Pursuant to such notice it is alleged that the respondent Corporation is also marked a portion. The petitioner is not willing to give consent as sought for and therefore apprehending coercive steps, present Writ Petition is filed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for

Visakhapatnam Municipal Corporation (VMC).

VMC sought consent of the owner for advance possession in larger public interest. It does not, however, mean that in the event of owner of the property not willing to give consent the respondent VMC would resort to high-handed action. In such case, the VMC has to necessarily resort to provisions of Section 147 of the Hyderabad Municipal Corporation Act, 1955 (for short, the Act). In **Srichand Rohra v. Commissioner, Municipal Corporation of Hyderabad** while dealing with similar matter, this Court made the following observations.

> A reading of the said letter does not in any way indicate that there is any truth in the submission made by the learned Counsel for the petitioners. What was sought to by issuing such letter is, a request was made to the landlords to give consent to handover advanced possession in the larger public interest. It was clearly informed that MCH will pay compensation to the effected structures as per the Rules and extent all benefits as per the Rules. If landlord desires to avail the benefits to be extended by the MCH on his own volition the landlord may give consent. If the landlord is not willing the letter nowhere compels one to part with the land for widening the road in which event as rightly contended by the learned Standing Counsel the MCH will have to resort to the provisions of the Land Acquisition Act.

Learned Standing Counsel for VMC submits that if the land owner is not agreed under private negotiations, land acquisition proposals will be taken up as per the Land Acquisition Act, 1894 (LA Act). Therefore, the Writ Petition is misconceived. If the petitioner is not given her consent, it is always open to VMC to initiate action under Section 147 of the Act and acquire the property of the petitioner. In this case, the petitioner has allegedly not given her willingness/consent to cooperate with the MCH for the road widening project. Needless to mention that Corporation has to initiate action under the provisions of LA Act. Till then, the petitioner cannot be deprived of his right to enjoy the property, nor the MCH can demolish the structures for the purpose of road widening.

The Writ Petition with the above observations is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

2.11.2005

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Note: Operative portion of the order

May be communicated by

WIRE at party's cost.

(B.O)

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